

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Telefónica Larga Distancia)	
de Puerto Rico, Inc.)	WC Docket No. 06-1
)	
Petition for Expedited Declaratory Ruling)	
Regarding Section 253 of the)	
Communications Act of 1934, as amended)	

**REPLY COMMENTS OF
TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC.**

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SUMMARY

At the outset, the Commission should note that on February 2, 2006, the business day prior to this filing, PRTC withdrew the tariff revisions containing the Single Zone Plan from the Puerto Rico Board and filed a motion to dismiss the related complaint proceeding. On the same date, TLD filed a motion with the Board seeking a period of ten days within which to address the PRTC motion. As of this date, the proceeding before the Board remains open and TLD believes there are issues that may need to be resolved and conditions to be established by the Puerto Rico Board before the proceedings can be dismissed. TLD will supplement the record of this proceeding as appropriate and, if events warrant, TLD will consider withdrawal of the Petition.

In claiming that the relief that TLD seeks in the Petition is premature, the Puerto Rico Board and PRTC focus principally on TLD's separate request for preemption, and say little about TLD's request for a declaratory ruling. In the first instance, however, TLD does *not* request preemption—TLD requests a declaratory ruling from the Commission before the Puerto Rico Board acts, stating that implementation of the Single Zone Plan proposed by PRTC under review by the Puerto Rico Board would violate Section 253(a). The Puerto Rico Board, if it chose to approve the Single Zone Plan despite a Commission declaratory ruling for TLD, would still have an opportunity to include, as part of its approval, any justification under one of the exceptions in Section 253(b). TLD requests preemption only if the Puerto Rico Board approves the Single Zone Plan, or permits it to go into effect, *before* the Commission acts on the Petition.

PRTC argues that the Single Zone Plan cannot be reviewed under Section 253 because, under Puerto Rico Law 213, tariff sheets like those containing the Single Zone Plan are not actively “approved” by the Puerto Rico Board, but rather they “take effect by operation of the terms of the tariff.” PRTC argues that the Puerto Rico Board does not “act” to approve the tariff,

so there is no state “legal requirement” that can be reviewed under Section 253(a). PRTC is wrong. The Puerto Rico Board has clear authority to approve tariffs that come before them, as the Single Zone Plan tariff has, as a result of a complaint filed against it. Moreover, if PRTC’s argument is accepted, the Commission would be powerless to stop the Puerto Rico Board and legislature from authorizing the dominant carrier in Puerto Rico to wipe out competition in an entire market, in derogation of federal law. PRTC’s argument would allow states to write their laws so as to authorize monopolies to eviscerate market competition without a meaningful opportunity to review pursuant to Section 253. The Commission should reject hypertechnical arguments like those advanced by PRTC and interpret the phrase in Section 253(a) “or other State or local legal requirement” in the same manner it has in the past to accomplish Congress’ broad pro-competitive purposes. Moreover, once the tariff providing for a mandatory bundle takes effect, under Puerto Rico law PRTC is required to follow it and not sell intra-island long distance service and local exchange service separately, thereby effectively prohibiting TLD and others from providing a competitive intrastate long distance service.

PRTC argues that the Single Zone Plan is a response to market forces and is necessary to promote competition. PRTC states that wireless carriers and two CLECs in Puerto Rico treat the island as one calling zone. This argument is not relevant as a purported justification of a proposal that eliminates competition in a long-standing market. Moreover, there is no reason given, nor can there be, for a mandatory bundling of local and intra-island long distance services that victimizes competition and consumers. PRTC ignores that it can and does offer optional bundled service packages already, but that customers have not elected to purchase those bundled services in significant numbers. PRTC’s position requires that this Commission consider Puerto Rico to be a single undifferentiated market with no distinction between services that are

distinct—local exchange service, intrastate long distance service, interstate long distance service, wireless, wireline, and VoIP.

Moreover, PRTC's argument that wireline and wireless competes directly and extensively contradicts PRTC's own statements made to the Commission recently as well as legislatively defined telecommunications markets in Puerto Rico. Furthermore, the Single Zone Plan would constitute an impermissible tying arrangement, forcing the purchase of intra-island long distance service from PRTC by local exchange service customers who would prefer to purchase it elsewhere on different terms or not at all.

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**REPLY COMMENTS OF
TELEFÓNICA LARGA DISTANCIA DE PUERTO RICO, INC.**

Pursuant to the Commission’s January 6, 2006 Public Notice in these proceedings,¹ Telefónica Larga Distancia de Puerto Rico, Inc. (“TLD”) hereby submits its reply to (i) Opposition of the Telecommunications Regulatory Board of Puerto Rico (“Puerto Rico Board”), and (ii) Comments of Puerto Rico Telephone Company, Inc. (“PRTC”), each of which was filed on January 26, 2006 in opposition to TLD’s December 20, 2005 Petition for Expedited Declaratory Ruling (“Petition”).² Comments in support of the Petition were filed by Sprint Nextel Corporation and San Juan Cable, LLC.³

¹ Public Notice, Pleading Cycle Established for Comments, WC Docket No. 06-1, DA 06-32 (Jan. 6, 2006).

² The Commission should note that on February 2, 2006, the business day prior to this reply filing, PRTC withdrew the tariff revisions containing the Single Zone Plan from the Puerto Rico Board and filed a motion to dismiss the related complaint proceeding. On the same date, TLD filed a motion with the Board seeking a period of ten days within which to address the PRTC motion. As of this date, the proceeding before the Board remains open and TLD believes there are issues that may need to be resolved and conditions to be established by the Puerto Rico Board before the proceedings can be dismissed. TLD will supplement the record of this proceeding as appropriate and, if events warrant, TLD will consider withdrawal of the Petition.

³ See Comments of Sprint Nextel Corp. (filed Jan. 26, 2006); Comments of San Juan Cable, LLC (filed Jan. 26, 2006).

The Petition requests that the Commission issue a declaratory ruling under 47 C.F.R. §§ 1.1 and 1.2 stating that approval by the Puerto Rico Board of the “Single Zone Plan,” filed with the Puerto Rico Board by incumbent local exchange carrier PRTC on April 6, 2005, would violate Section 253(a) (“Section 253(a)”) of the Communications Act of 1934, as amended (“Act”).⁴ The Petition requests, alternatively, that if the Puerto Rico Board approves the Single Zone Plan (including permitting the Single Zone Plan to go into effect) prior to a ruling by the Commission on TLD’s Petition, that the Commission preempt the Single Zone Plan pursuant to Section 253(d). In addition, the Petition requests that the Commission issue a declaratory ruling concerning several additional matters presented therein.⁵

I. ARGUMENT

A. The Puerto Rico Board and PRTC Misapprehend or Misconstrue the Relief Requested by the Petition.

In claiming that the relief that TLD seeks in the Petition is premature, the Puerto Rico Board and PRTC focus principally on TLD’s separate request for preemption, and say little about TLD’s request for a declaratory ruling. In the first instance, however, TLD does *not* request preemption—TLD requests a declaratory ruling from the Commission before the Puerto Rico Board acts, stating that it would violate Section 253(a) for the Puerto Rico Board to permit implementation of the Single Zone Plan proposed by PRTC. TLD requests preemption only if the Puerto Rico Board approves the Single Zone Plan, or permits it to go into effect, *before* the Commission acts on the Petition. It is the PRTC and Puerto Rico Board arguments against preemption that are premature.

⁴ 47 U.S.C. § 253(a).

⁵ See Petition at 19-24.

The Puerto Rico Board argues that the Commission should not preempt with respect to the Single Zone Plan because the Puerto Rico Board has not yet acted, and there is no basis to predict what it will do with respect to the Single Zone Plan.⁶ Similarly, PRTC states that the Petition seeks preemption of a “nullity”⁷ or of a “hypothetical action.”⁸

Both the Puerto Rico Board and PRTC misapprehend the principal relief requested by the Petition; it is not preemption, but rather a declaratory ruling under § 1.2 of the Commission rules which would state that approval of the Single Zone Plan as filed violates Section 253(a). Section 253(a) is a straightforward prohibition:

No State or local statute or regulation, or other State or local legal requirement, may prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or *intrastate telecommunications service*.⁹

TLD simply asks that the Commission review the Single Zone Plan as it has been filed to determine whether regulatory action permitting it to be implemented and then requiring it to be followed has the effect of “prohibiting the ability of any entity to provide any ... intrastate telecommunications service.”

TLD’s principal request is no different from any participant in a telecommunications market seeking a declaration or guidance from the Commission that an action it may do—or that may be done to it—is consistent with the Communications Act.¹⁰ The Commission can and does

⁶ See Puerto Rico Board Opposition at 7.

⁷ PRTC Comments at 1.

⁸ *Id.* at 5.

⁹ 47 U.S.C. § 253(a) (*italics added*).

¹⁰ See *In re Fox Television Stations Inc.*, 8 FCC Rcd 5341 at ¶¶ 13-14 & n.5 (1993) (“we are free to issue a declaratory ruling even as to a hypothetical situation”); *AT&T Corp. v. U S West Commc’ns, Inc.*, 16 FCC Rcd 3574 at ¶ 32 (Enforcement Bureau 2001) (“Our task in this section 208 complaint proceeding is to adjudicate the lawfulness of prior or current conduct and not to opine on the lawfulness of hypothetical or future conduct. However, U S West is free to (con’t)

issue such declaratory rulings with respect to various sections of the Communications Act in order to “terminat[e] a controversy or eliminat[e] uncertainty.”¹¹ TLD has presented to the Commission a specific set of facts for a declaratory ruling, *i.e.*, whether state regulatory approval of a mandatory statewide bundle of local and intrastate long distance services, as represented by PRTC’s Single Zone Plan, would violate Section 253(a).

Upon implementation, the Single Zone Plan would eliminate immediately and entirely the intra-island long distance service market and the benefits that competition in that market brings to customers.¹² That intra-island market exists today and competitors to PRTC have a significant share. That is far more competition than in the residential local market over which

file a Petition for Declaratory Ruling requesting an opinion as to the lawfulness of proposed changes to it Service.”).

¹¹ 5 U.S.C. § 554(e); 47 C.F.R. § 1.2. *See, e.g., In re Merin*, 11 FCC Rcd 5360 (Wireless Telecomms. Bureau 1996) (granting request for declaratory ruling that imposition of a collective trust over her partnership interest in a CMRS carrier, not yet implemented, would violate § 22.921 of the Commission’s rules); *In re Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, 36 Comm. Reg. (P&F) 693, 2005 WL 1981564 (2005) (granting request for clarification and declaratory ruling that petitioner may rely on “established business relationship” exemption from the definition of telephone solicitation in Section 227(a)(3) of the Communications Act); *In re Petition for Declaratory Ruling that Pulver.com’s Free World Dialup is Neither Telecommunications nor a Telecommunications Service*, 19 FCC Rcd 3307 (2004) (granting petition for declaratory ruling that petitioner’s Free World Dialup offering is not a “telecommunications service” or “telecommunications” as defined in Section 153 of the Communications Act); *In re NextWave Personal Commc’ns, Inc.*, 18 FCC Rcd 14487 (2003) (granting petition for declaratory ruling seeking confirmation that the level of indirect foreign ownership of petitioner’s subsidiaries comports with Section 310(b)(4) and related Commission rules and policies); *In re N.C. Payphone Ass’n Petition for Declaratory Ruling and Mich. Payphone Ass’n Petition for Declaratory Ruling*, 17 FCC Rcd 4275 (2002) (granting petitioners’ requests for declaratory rulings that decisions of the North Carolina Utilities Commission and the Michigan Public Service Commission were inconsistent with Section 276 of the Communications Act and related Commission precedent); *In re Entertainment Connections, Inc.*, 13 FCC Rcd. 14277 (1998) (granting motion for declaratory ruling that petitioner is not a cable operator required to obtain a franchise under Section 621 of the Communications Act).

¹² *See* Petition Exh. A ¶¶ 8-9.

PRTC maintains a nearly complete stranglehold.¹³ Should the Puerto Rico Board take action to permit it, implementation of the Single Zone Plan would immediately decimate competition and transfer revenues competitors now receive directly into the pockets of PRTC.¹⁴ Customers' choices would be overridden, competition that can keep PRTC's prices in check would be eliminated, competitive investment would be marooned, and PRTC's local monopoly would be extended island-wide. The intrastate long distance market, which exists in all 50 states and in a recent year generated collectively \$23 billion,¹⁵ obviously remains very significant and would continue to exist in every state but not in Puerto Rico.

The Puerto Rico Board, if it chose to approve the Single Zone Plan despite issuance of the requested declaratory ruling, would still have an opportunity to include, as part of its approval, any justification under one of the exceptions in Section 253(b). In such a case, if the Puerto Rico Board did not stay its own ruling in recognition of a substantial federal issue, TLD likely would seek both a stay based on the record in this proceeding and a determination of whether there exists a valid Section 253(b) exception to the Section 253(a) violation.¹⁶

The Puerto Rico Board makes clear its view that any Petition that TLD files at the Commission to enforce the protections of Section 253 would be unwelcome and untimely regardless of when it is filed. The Puerto Rico Board argues that TLD is too early now because

¹³ See *id.* ¶¶ 4-5.

¹⁴ Under Puerto Rico law, PRTC can implement its tariff the day after the Puerto Rico Board rules, throwing aside a consumer's preselected intra-island carrier and taking all of TLD's, Sprint's, and other intra-island providers' customers, effectively destroying competition with no opportunity for Commission review.

¹⁵ See Puerto Rico Board Opposition at 4 n.10 (citing Wireline Competition Bureau, *Trends in Telephone Service*, at tbl. 9-2 (Apr. 2005)).

¹⁶ It is noteworthy that nothing in the Puerto Rico Board's Opposition or PRTC's Comments shows that the Single Zone Plan may be necessary to accomplish the goals of Section 253(b) and it is hard to imagine a credible finding that such is the case.

the Puerto Rico Board has not yet acted. But the Puerto Rico Board rejected without comment TLD's motion seeking an order providing that PRTC could not implement the Single Zone Plan for a reasonable period of time after a Puerto Rico Board decision allowing implementation. That would have ensured that the Commission would have an opportunity to uphold federal law by assessing, if necessary, whether Puerto Rico Board action was consistent with Section 253(a) and the Telecommunications Act of 1996 before the Single Zone Plan could be implemented to devastating effect. Thus, bringing this issue forward now, and a Commission declaration prior to action by the Puerto Rico Board, is essential. If the Petition were filed only after implementation of the Single Zone Plan, it likely would be too late.

The Puerto Rico Board seeks to put the Commission in a quandary. The Puerto Rico Board urges the Commission to refrain from acting and to allow it to make any ruling it wishes, even one that would eliminate a market and that the Puerto Rico Board will allow to be implemented the next day. Under the Puerto Rico Board's logic, the only role for the Commission would be to try to reinstate the intra-island long distance market after it is destroyed. Such an approach unrealistically treats competition like a faucet, as if a company's business can be turned back on after such business has been eliminated and its customers switched to another provider. Once implemented, the Single Zone Plan and associated dialing plan will immediately co-opt all subscribers of all competitive intra-island long distance carriers. Once competitive carriers in the intra-island market lose their entire client base to PRTC, there is no *post facto* remedy that can effectively restore competition. This insensitivity to how companies, competition, and markets work could effectively make an adverse decision unreviewable and vindication of federal requirements impossible in spite of the express provisions of Section 253 and the pro-competitive goals of the Telecommunications Act of 1996.

B. PRTC's Position that the Single Zone Plan is Unreviewable Under Section 253 is Indefensible.

PRTC argues that the Single Zone Plan cannot be reviewed under Section 253 because, under Puerto Rico Law 213, tariff sheets like those containing the Single Zone Plan are not actively “approved” by the Puerto Rico Board, but rather they “take effect by operation of the terms of the tariff.”¹⁷ PRTC argues that the Puerto Rico Board does not “act” to approve the tariff, so there is no state “legal requirement” that can be reviewed under Section 253(a).¹⁸ Section III-7(a) of Law 213, states:

Every telecommunications company shall have to submit to the Board a list of prices and charges, and every time a change is made, it shall have to submit them simultaneously when implemented in the market.¹⁹

Section III-7(b) goes on to state:

The Board shall, at request of the interested party, and through a complaint thereby, ascertain whether the prices and/or charges established are not based on their cost. . . .²⁰

It is within this framework that PRTC argues that there is no state action that can be reviewed under Section 253.

As a threshold matter, PRTC's argument is wrong and is contrary to the intent of Congress and Commission precedent. If accepted, the Commission would be powerless to stop the Puerto Rico Board and legislature from authorizing the dominant carrier to wipe out

¹⁷ PRTC Comments at 6.

¹⁸ *See id.* at 7.

¹⁹ Petition Exh. G at 41.

²⁰ *Id.* In the Puerto Rico Board proceeding concerning the Single Zone Plan, Case Nos. JRT-2005-Q-0121, the Puerto Rico Board has made clear repeatedly that its authority to review PRTC's rates extends well beyond whether they are cost-based and, indeed, an entire phase of the proceeding focuses on “non-cost” issues such as impact on consumers, competition and the telecommunications markets.

competition in an entire market, in derogation of federal law. PRTC's entire argument on this point is nothing more than a transparent and ultimately incorrect game of semantics which, played PRTC's way, would allow states to write their laws so as to authorize monopolies to eviscerate market competition without a meaningful opportunity to review pursuant to Section 253. The Commission should reject hypertechnical arguments like those advanced by PRTC that at best elevate form over substance. Instead, the Commission should broadly interpret the phrase in Section 253(a) "or other State or local legal requirement" to accomplish Congress' broad pro-competitive purposes, because under any other approach a legislature or state regulator "could escape preemption based on the way in which action was structured."²¹

In any event, PRTC's argument is incorrect. When a tariff is brought before the Puerto Rico Board because of a complaint, the tariff cannot go into effect until the Puerto Rico Board resolves the complaint. PRTC's efforts to draw a distinction between the denial of a complaint against a tariff, which would be necessary to allow the tariff to take effect, and the approval of the tariff lacks meaning. If the Puerto Rico Board denies the pending complaints against the Single Zone Plan and thereby authorizes PRTC to destroy competition by putting the Plan into effect, it has "approved" the Single Zone Plan or otherwise taken the necessary state action to come within Section 253(a).²² PRTC also fails to contemplate that to the extent it argues that a tariff becomes effective "under its own terms," a tariff only can do so pursuant to Law 213 itself.

²¹ *In re Minn.*, 14 Rcd 21697, 21707 (1999).

²² TLD believes that Law 213 actually requires the Puerto Rico Board to reject the Single Zone Plan because Law 213 identifies separate local exchange, intrastate access, intrastate telecommunications, and wireless markets. *See* Law 213 §§ I-3(c), I-3(f), I-3(w), I-3(y), I-3(z), III-1(a), III-4(r), III-5(e)(3). Eliminating intra-island long distance (and consequently the intrastate access market as well) is inconsistent with the market structure set forth in Law 213 and, in contravention of basic principles of statutory construction, would render meaningless language in Law 213. TLD put this issue before the Puerto Rico Board in a motion for summary judgment, but to date there has been no ruling.

It cannot be the case that because the Puerto Rico legislature chose to make a dominant incumbent local exchange carrier's tariffs "automatically effective," such tariffs are immune from the Telecommunications Act of 1996.²³

PRTC's view of Law 213 is overly narrow for other reasons as well. Several other provisions of Law 213 combine to give the Puerto Rico Board broad control over proposals to eliminate competition.²⁴ If the Puerto Rico Board determines that in order to allow the Single

²³ The Commission has already determined that this cannot be the case. In *Minnesota*, the Commission stated:

We conclude that Congress intended that the phrase, "State or local statute or regulation, or other State or local legal requirement" in section 253(a) be interpreted broadly. The fact that Congress included the term "other legal requirements" within the scope of section 253(a) recognizes that State and local barriers to entry could come from sources other than statutes and regulations. *The use of this language also indicates that section 253(a) was meant to capture a broad range of state and local actions that prohibit or have the effect of prohibiting entities from providing telecommunications services.* We believe that interpreting the term "legal requirement" broadly, best fulfills Congress' desire to ensure that states and localities do not thwart the development of competition. Our conclusion, that Congress intended this language to be interpreted broadly, is reinforced by the scope of section 253(d). Section 253(d) directs the Commission to preempt any statute, regulation, or legal requirement permitted or imposed by a state or local government if it contravenes sections 253(a) or (b). A more restrictive interpretation of the term "other legal requirements" easily could permit state and local restrictions on competition to escape preemption based *solely on the way in which action was structured*. We do not believe that Congress intended this result. *Id.* (citations omitted) (italics added).

In re Minn., 14 Rcd 21697, 21707 (1999). Therefore, state action permitting the Single Zone Plan to become effective, no matter how it transpires, constitutes a legal requirement subject to review under Section 253.

²⁴ Other provisions of Law 213 give the Puerto Rico broad authority to determine whether to allow or block implementation of the Single Zone Plan, including, for example, the authority to: (i) adjudicate complaints and suspend rates, Law 213 § III-7(c); (ii) issue regulations, orders, and requirements in compliance with the Telecommunications Act, *id.* § III-2(e); (iii) protect against subsidization and pricing below cost, *id.* § III-4(k)-(l). In addition, the Puerto Rico (con't)

Zone Plan to be implemented (which PRTC is then required by law to follow) it is required by Puerto Rico law to sweep these provisions out of the way, the Puerto Rico Board is applying Puerto Rico law in derogation of Section 253(a).²⁵

Furthermore, once the Board disposes of any complaints and PRTC begins to implement the Single Zone Plan, it will certainly be a Puerto Rico legal requirement, enforceable under Puerto Rico law, that PRTC comply with the tariff by offering local exchange service and intrastate long distance service as a bundle and cease offering intrastate long distance service separately. Thus, even if there were no action by the Puerto Rico Board that constitutes state action for purposes of Section 253, the fact that a tariff becomes binding makes the tariff a “legal requirement” that has the effect of prohibiting TLD and others from offering an intrastate long distance service for purposes of Section 253.

C. The Single Zone Plan Does Not Respond to or Promote Competition.

PRTC generally attempts to defend the mandatory Single Zone Plan with the unsupported argument that it is the natural consequence of customer demand and intermodal competition in the market.²⁶ This defense is completely unavailing. PRTC presents no evidence or data to support its conclusory statements.

First, there is nothing presented regarding customer demand for a mandatory intrastate calling plan. On this basis alone, PRTC’s allegation must be deemed to add little to the debate.

Board is given extremely broad implementation authority to achieve the purposes of Law 213. *See id.* § II-10.

²⁵ If PRTC is correct that “approval” of a tariff under Law 213 does not constitute state action for purposes of Section 253(a), then critical provisions of Law 213 itself conflict with Section 253(a), including those which would allow a dominant carrier to eliminate established markets on its own authority.

²⁶ *See* PRTC Comments at 14-16.

Second, to the extent PRTC mentions a wireline competitor, Centennial, PRTC fails to tell the Commission now what it accurately told the Commission in its own March 29, 2005 letter: “PRT’s sole major facilities-based wireline competitor is focused on the business market and new commercial and residential development.”²⁷ Centennial’s presence in the residential local exchange service market does not even register as a market share. Moreover, FCC data shows that Centennial, as Puerto Rico’s only facilities-based CLEC with ten thousand or more access lines, competes in only 20% of Puerto Rico zip codes.²⁸

Third, there is little or no indication that there is any cognizable competition to PRTC’s residential local exchange service in Puerto Rico, and, indeed, PRTC recently told the Commission as much. In a March 29, 2005 letter PRTC wrote: “Based on the conditions in Puerto Rico, it is highly unlikely that more than a very small percentage of households subscribe to a wireline or wireless competitive carrier in place of PRT.”²⁹ In light of PRTC’s breathtakingly inconsistent statements to the Commission on the issue of competition, its position lacks any credibility.

Fourth, and this cannot be emphasized enough, it is not the island-wide characteristic of the Single Zone Plan that is objectionable, but rather its mandatory nature. As indicated in TLD’s Petition, PRTC already offers an island-wide service called the Puerto Rico Ilimitado Calling Plan. In addition, PRTC already offers at least nine other island-wide calling plans.³⁰ PRTC does not even mention in its comments the optional island-wide calling bundles that it offers, let alone deny that it can and does offer such bundles when it sees fit for competitive or

²⁷ Petition Exh. C at 1.

²⁸ Petition Exh. E at tbl. 16.

²⁹ Petition Exh. C at 1.

³⁰ See Exh. B hereto.

any other purposes. PRTC's attempts to characterize TLD's Petition as seeking to prevent PRTC from offering any island-wide service bundle in competition with those who do are totally without foundation and are refuted by its own current marketplace offers.

1. PRTC Ignores Proper Market Distinctions and Lumps All Telecommunications Together in One Market

PRTC argues that the Single Zone Plan is a response to market forces and is necessary to promote competition.³¹ PRTC's false and self-serving perceptions of the market do not vitiate the anticompetitive effect of the Single Zone Plan.

PRTC states that wireless carriers and two CLECs, Centennial Communications Corp. and WorldNet, treat the island as one calling zone.³² PRTC goes on to surmise that the introduction of VoIP will also be provided on an island-wide basis.³³ PRTC then argues that "PRT is adopting one calling zone because customers are demanding it. If PRT is not allowed to react to market pressures in the same way as its competitors (such as WorldNet and Centennial), it will continue to lose both toll revenues and access lines as customers switch to wireless and wireline providers offering single-zone services."³⁴

Again, PRTC glosses over its perceptions of customer demand and totally ignores that it can and does offer optional bundled service packages already, but that customers have not elected to purchase those bundled services in significant numbers.

Tellingly, PRTC's claims of competition lack any kind of analytic precision. PRTC's position requires that this Commission wrongly consider Puerto Rico to be an undifferentiated market with no distinction between local exchange service, intrastate long distance service,

³¹ PRTC Comments at 14.

³² *Id.* at 15.

³³ *Id.* at 16.

³⁴ *Id.*

interstate long distance service, wireless, wireline, and VoIP.³⁵ PRTC does not concern itself with whether these services are properly classified as within the same market, and it is not the Commission's role to redefine telecommunications markets in order to excuse the anticompetitive effects of its tariff proposals.

PRTC's argument seems to be that the Commission should consider any communications service to be PRTC's competition regardless of the level of substitution, no matter how anecdotal the basis for inclusion, how small the group of customers who might substitute the services, and without demonstrating any nexus between decreases in demand for a PRTC service and increases in demand for a non-PRTC service.³⁶ According to PRTC, the Single Zone Plan should be gauged without any consideration of PRTC's monopoly in the residential local exchange services market and its dominance in the business local exchange service and intra-island long distance service markets.

PRTC's contention that it is not eliminating the intra-island long distance service market is expressly premised on PRTC's redefinition of telecommunications markets in Puerto Rico and is thus a circular argument. It is a fact that there exists an intra-island long distance service market with multiple facilities-based competitors. PRTC's unilateral redefinition of commonly accepted telecommunications markets to just a single market not only eliminates the intra-island long distance service market, but is a major step back to a time before the 1996 Act when PRTC,

³⁵ PRTC controls not only the monopoly wireline provider but also the second leading wireless provider. If these were the same market, antitrust and other issues would potentially be raised.

³⁶ As part of the methodology to define markets, the DOJ/FTC merger guidelines look at whether a small change in the price leads to a large change in demand. *See* DOJ/FTC, *Horizontal Merger Guidelines* §§ 1.11, 1.12 (Apr. 2, 1992, rev. Apr. 8, 1997). There is no evidence that a change in PRTC's wireline prices will result in a large number of customers substituting wireless service or vice versa.

as a 100% government-owned entity, enjoyed a monopoly protected by a statutory prohibition against competition in all intra-island telecommunications services.³⁷

Additionally, PRTC's arguments are merely an overreaching effort to convert trends into absolutes. PRTC notes that intra-island long distance minutes have declined from earlier levels,³⁸ but would have regulators intervene to require implementation of the Single Zone Plan, which would eliminate TLD and other intrastate long distance service providers, and the intra-island long distance market itself, completely. PRTC's conclusory statements also ignore the fact that Puerto Rico recently went from 68 calling zones to 10 calling zones, and that intra-

³⁷ PRTC's effort to have the Commission consider all of Puerto Rico as only one relevant telecommunications services market also flies in the face of Puerto Rico's own treatment of telecommunications. Law 213 recognizes separate local telecommunications services, access service, intrastate long distance and cellular/beepers markets in Puerto Rico. *See* Law 213 §§ I-3(c), I-3(f), I-3(w), I-3(y), I-3(z), III-1(a), III-4(r), III-5(e)(3) (Petition Exh. G). It states a legislative presumption that PRTC is dominant in each of these markets except for the cellular/beepers market. *Id.* § III-1(a). Indeed, in 2000, the Puerto Rico Board conducted a proceeding and confirmed the continued dominance of PRTC in the local telecommunications service, access service and intrastate long distance service markets. *See* Resolution and Order, *In Re Solicitud de Comentarios en Torno a Dominio de Mercado en la Prestación de Servicios de Telecomunicaciones*, Case No. JRT-2000-CCG-0003 (Aug. 23, 2000), *recon. denied*, Resolution and Order on Reconsideration (Dec. 12, 2000).

At no time since that decision has PRTC requested that the Puerto Rico Board reconsider its dominance determination as to any of those markets nor has the Puerto Rico Board done so on its own or any other person's motion. PRTC has not requested that the Puerto Rico Board commence a proceeding to redefine the telecommunications markets in Puerto Rico, nor has the Puerto Rico Board done so on its own or any other person's motion. Even if the Puerto Rico Board had been so inclined, the fact that Law 213 recognizes specific telecommunications markets in Puerto Rico would have made any such redefinition a matter more appropriate for legislative amendment. *See Koons Buick Pontiac GMC, Inc. v. Nigh*, 543 U.S. 50, 125 S. Ct. 460, 467 (2004); *Duncan v. Walker*, 533 U.S. 167, 174 (2001) (quoting *Market Co. v. Hoffman*, 101 U.S. 112, 115 (1879)); *NLRB v. Lion Oil Co.*, 352 U.S. 282, 284 (1957); *United States v. Commonwealth Energy Sys.*, 235 F.3d 11, 15 (1st Cir. 2000); *see also Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979); *Herman v. Hector I. Nieves Transp., Inc.*, 244 F.3d 32, 36 (1st Cir. 2001).

³⁸ PRTC Comments at 14-16.

island long distance minutes were consequently reduced.³⁹ TLD voices no opinion on whether offering 10 local calling areas in Puerto Rico is reasonable, but observes that if 68 were too many, then the time period when there were 68 local calling areas is not an appropriate baseline from which to measure a reduction in intra-island long distance minutes.

Now that competition has been introduced—and that, in particular, intra-island access charges have been cut over 75%—PRTC seeks to enforce a mandatory single island-wide calling area and eliminate the intra-island long distance market. Rather than allowing consumers and markets to determine the desirability of stand alone intra-island service, PRTC is attempting to fold the intrastate long distance service market, where competition exists, into the local exchange service market, where competition does not exist, in order to grab the revenues of the former using its monopoly power in the latter. Approval of the Single Zone Plan by the Puerto Rico Board will allow, indeed require, this. Section 253 provides the Commission with the tools to prevent this from happening.

2. PRTC's Allegations of Wireless Substitution As a Business Reason For Implementing the Single Zone Plan Do Not Excuse a Violation of Section 253(a).

PRTC argues that its Single Zone Plan is a response to competition. In the first instance, this is irrelevant to a Section 253(a) analysis insofar as whatever PRTC's business reasons for wanting to implement the Single Zone Plan, they cannot excuse the elimination of an entire competitive telecommunications market.

³⁹ Prior to the 1996 Act, when PRTC enjoyed statutorily protected status, it carved the island into 68 tiny local calling areas, thereby assuring itself substantial intra-island toll revenues.

Nonetheless, PRTC claims that competition from wireless services justifies its Single Zone Plan.⁴⁰ PRTC's professed belief that reduction in its wireline revenues has some significant relationship to the increase in wireless subscription is belied by the fact that the acknowledged wireless substitution rate is only between 5 and 6 percent.⁴¹ Furthermore, even that small amount of substitution is due in large measure to the cannibalizing effect of PRTC's own significant presence (approximately 25% market share) in the Puerto Rico wireless market and its dominant presence in DSL and broadband services, which accounts for a clear majority of the substitution attributable to cancellation of secondary lines,⁴² among other reasons. Finally, given the narrow national profile of the consumer that has a wireless phone but not a wireline phone, any trend projection is inherently suspect and should not justify elimination of an existing intrastate long distance service market.⁴³

⁴⁰ PRTC Comments at 15. PRTC also suggests that VoIP service may constitute competition. *Id.* at 16. However, VoIP is totally dependent on broadband penetration, which in Puerto Rico is very low. *See, e.g.,* Wireline Competition Bureau, *High-Speed Services for Internet Access*, at tbls. 7 & 11 (July 2005).

⁴¹ *See, e.g.,* Dep't of Health and Human Services, *The Prevalence and Impact of Wireless Substitution*, Summary Tables, at tbl. 1 (May 14, 2005); Economics & Technology, Inc., *Confronting Telecom Industry Consolidation* at 31 (Apr. 2005); Clyde Tucker *et al.*, Bureau of Labor Statistics, *Household Telephone Service and Usage Patterns in the U.S. in 2004*, at tbl. A (undated).

⁴² A certain indeterminate number of wireline access line reductions are the result of elimination of second lines by consumers, and therefore do not represent a substitution of a mode of primary voice communication. These second lines are usually used for dial up internet access and not for voice communications. The reduction in the number of these lines is likely the result of some migration to broadband internet services such as DSL or cable modem services or simply the elimination of a second line due to economic factors. According to the United States Census Bureau, three to four percent of households have more than two unique land line phone numbers. *See* Tucker *et al.*, at tbl. C.

⁴³ For example, the "wireless phone only" profile based on the largest percentages is as follows: (a) 15 to 24 years of age; (b) rent their homes; (c) are not married; (d) maintain a household of one person; and (e) live in apartment buildings or other multi-unit buildings. *See* Tucker *et al.*, at tbls. A & B. Also, given the age profile (18-24) of the person most likely to engage in wireless substitution, increases in wireless access lines are due in part to wireless (con't)

In March 2005, PRTC stressed to the Commission that wireline service and wireless service in Puerto Rico are *complementary* rather than competitive:

Based on the conditions in Puerto Rico, it is highly unlikely that more than a very small percentage of households subscribe to a wireline or wireless competitive carrier in place of [PRTC]. This is based on the fact that the areas in which [PRTC]'s subscribership levels are particularly low—those areas requiring network build-out and low-income residential and rural communities—are also areas in which competitors, wireline and wireless, lack facilities.⁴⁴

Despite presenting to the Commission as fact that wireless and wireline are complementary services and that wireless does not replace wireline in Puerto Rico, PRTC now argues in its Opposition that substitution in usage between wireline and wireless somehow justifies its mandatory Single Zone Plan and the resulting elimination of the intrastate long distance services market.

While wholesale replacement of wireline phones with wireless phones is not common, some “minute substitution” does occur in that consumers may use a wireless phone to make a call when a wireline phone is readily available.⁴⁵ The extent to which “minute substitution” occurs is very difficult to quantify because while we cannot assume that no “minute substitution” occurs, we also cannot assume that every minute of wireless usage substitutes for a minute of wireline usage. PRTC has not presented any data that facilitates the process of quantifying the effect. What can be said, however, is that “minute substitution” is not unique to Puerto Rico or to PRTC. It is an issue for all incumbent local exchange carriers. However, PRTC seems incapable of explaining why it purportedly has found it necessary to implement a plan that

phones acquired by young people who never had a wireline phone. Nor is it likely that they will refrain from adding a wireline telephone as their demographic status changes.

⁴⁴ Petition Exh. C at 1.

⁴⁵ See PRTC Comments at 14-16.

eliminates an entire telecommunications market in order to address its minute substitution concerns when no other incumbent local exchange carrier has found it necessary to adopt such a draconian approach.

What PRTC seeks to do with the Single Zone Plan is not respond to “minute substitution” by competing with wireless services in the marketplace but, rather, avoid the effects of “minute substitution.” This it would do by charging its captive residential local exchange service subscribers a mandatory bundled rate for unlimited usage so that it will no longer matter to PRTC whether the consumer uses his or her wireline phone or wireless phone to make a call. As far as PRTC is concerned, it is getting paid the same amount for its wireline service regardless. This is not a competitive response because PRTC’s wireline service is not competing with wireless services. PRTC does not offer services or features that actualize a choice between wireline and wireless. The reality that PRTC understands all too well is that wireline and wireless services are complementary and not close substitutes and that consumers will not be readily forced to choose between the two services. PRTC knows that with captive residential local exchange subscribers, even a sizable increase in the price of residential local exchange service will not result in an outflow of those subscribers because they have no real alternative. Since competition is about real choices, wireless services and PRTC’s wireline service are not competitors and subscribers will want to retain both services. There are two groups that pay the heaviest price in order for PRTC to offset the impact of this unquantified “minute substitution,” and neither one is PRTC. PRTC is forcing its captive residential local exchange service subscribers to pay more and lose their ability to choose a preferred intrastate long distance service provider. These customers have no real alternative except PRTC if they want basic,

residential local exchange service. The second group is the competition in the intrastate long distance services market which will be eliminated along with the market itself.

PRTC's claim that the Single Zone Plan responds to competition from wireless services is misguided.⁴⁶ It responds neither to features nor calling scope. The Single Zone Plan does not address any of the major reasons why wireless is found attractive by consumers. Most significantly, the Single Zone Plan does not respond to the mobility or ubiquity that wireless services afford. Further, however, it does not respond to such features of wireless as camera features, video capability, gaming capability, music capability, web browsing capability, text

⁴⁶ The reasons that consumers are attracted to wireline and wireless services are significantly material and clearly indicate that PRTC's Single Zone Plan would not compete with wireless services. Significant increases in the numbers of wireless subscriptions are because of the most obviously unique characteristic of wireless services—the mobility and ubiquity that wireless phones afford. *See In-Stat/MDR* (<http://www.instat.com>) Press Release, *Consumers Not Quite Ready to "Cut the Cord,"* June 23, 2004 (Indeed, "cutting the cord" at whatever level it exists is primarily about convenience and mobility, not about price or fixed geography.) PRTC's desired creation of an island-wide local calling zone by incorporating toll charges into the basic rate does not address mobility or ubiquity, a primary reason why usage patterns have changed. Wireless popularity has also swelled because wireless phones are often treated as accessories, particularly among the young who have personalized the experience through the use of removable color plates, ring tones and size of the phones. Also, wireless phones have certain non-voice features not present on the wireline phones such as text messaging, web browsers, cameras (still and video) and gaming. Finally, wireless services offer a disposable prepaid phone that can be used for limited purposes. Here again, these are not things that are addressed by PRTC's Single Zone Plan. Indeed, with each new software application that is developed, the wireless phone distances itself further from being in the same market with wireline phone.

On the other hand, reliability and security are significant reasons, repeated over and over by consumers, why wireless will not be a substitute for wireline. The FCC has noted that wireless systems are engineered for call completion about 70% of the time while wireline systems are engineered for call completion 99% of the time. *See In re Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, 18 FCC Rcd 16978, at ¶ 230 & n.702 (2003). Wireless systems are simply not engineered to provide anywhere near the reliability of wireline systems and everyone who uses wireless phones has experienced the consequences—"dead spots" in service areas, echoes, static, inconsistent signal levels at the same place at different times, dropped calls and disconnects. Even the FCC warns consumers of wireless services about dropped calls, busy signals, and dead spots. *See* www.fcc.gov/cgb/consumerfacts/cellcoverage.html.

messaging, and individualized ring tones and personalized face plates. Indeed, with each new software application that is developed, the wireless phone distances itself further from being in the same market with wireline phone. A perceived shift in usage patterns for long distance minutes from wireline to wireless may mean that consumers at times choose between use of wireless and wireline when both are physically available, however, it clearly does not mean that consumers consider subscription to wireline and wireless services as competitive alternatives.

Nor does the Single Zone Plan represent a response to the calling scope of wireless services. PRTC has had and currently has a series of service bundles that it offers as options along with its traditional residential local exchange service. Each of these bundles include intra-island long distance calling. In short, PRTC currently offers island wide calling and the Single Zone Plan is distinguishable only in that it is mandatory.

The DOJ/FTC Merger Guidelines indicate that in order for two products to be considered true substitutes in the same product market, a small but significant and nontransitory change in the price of one would, assuming no changes in price by competitors, elicit a significant response in the opposite direction in consumer selection.⁴⁷ If wireless services and PRTC's wireline service were truly substitutes, a more than fifty percent (50%) reduction in PRTC's current bundled wireline service price—as PRTC proposes in the Single Zone Plan—would surely have a dramatic effect in migrating consumers from wireless services to the PRTC wireline service.⁴⁸

⁴⁷ See DOJ/FTC, *Horizontal Merger Guidelines* §§ 1,11, 1.12 (Apr. 2, 1992, rev. Apr. 8, 1997).

⁴⁸ Nonetheless, the mandatory Single Zone Plan, through the use of mandatory local and intra-island long distance bundles and PRTC's resulting addition to its base of all consumers that are currently customers of competitive intra-island long distance services, will yield significant gross profits for PRTC which will form the subsidy for the pricing of the mandatory Single Zone Plan. Thus, while PRTC falsely claims the Single Zone Plan is a competitive response to wireless services, it is, in effect, a vehicle for the elimination of PRTC's competition in the intra-(con't)

But nobody expects any cognizable shift in consumer patterns and certainly not a dramatic one if it is implemented. This is because, as PRTC itself has stated to the Commission, the services are complements to each other, not competitors in the same market.⁴⁹ It is TLD's experience that the vast majority of households in Puerto Rico that subscribe to wireless services also have landline service. Moreover, as the Commission has stated, it has no evidence that would enable it to conclude that wireless pricing exerts any constraint on wireline pricing.⁵⁰

3. PRTC Cannot Rely on Interconnection Arbitrations to Redefine the Markets in Puerto Rico

PRTC also claims that the use of an island-wide local calling area in an interconnection arbitration proceeding between Centennial and PRTC supports PRTC's proposal of an island-wide local calling zone in the Single Zone Plan.⁵¹ PRTC is wrong. The Commission specifically defined the local calling area of a Commercial Mobile Radio Service carrier, such as cellular and personal communications service ("PCS") carriers, as the largest FCC-authorized wireless license territory, *i.e.*, the Major Trading Area ("MTA").⁵² Centennial has a PCS license with an authorized service area of the Puerto Rico MTA, which includes the entire island of Puerto Rico. Thus, by Commission definition, Centennial's local calling area includes the entire island of Puerto Rico. In point of fact, in an interconnection arbitration involving a wireless carrier, the

island long distance market. Ironically, PRTC will not offer its new bundle as an option, because it knows that it will not attract as many customers as it wishes—rather than let consumers choose, PRTC will force a mandatory bundle on them.

⁴⁹ Petition Exh. C at 1.

⁵⁰ See *In re Verizon Commc'ns, Inc.*, 2005 FCC LEXIS 6386 at n.276 (2005).

⁵¹ PRTC Comments at 18-19 (citing Arbitrator's Report and Order, *Petition of Centennial Puerto Rico License Corp. for Arbitration Pursuant to Section 252(B) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Puerto Rico Telephone Company*, Case No. JRT-2005-AR-0001 (TRB Arb. May 23, 2005)).

⁵² See *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 Rcd 15499, at ¶ 1036 (1996).

Puerto Rico Board has no discretion with respect to the wireless carrier's local calling area. Of critical importance, the decision to define the local service area of a CMRS provider at the licensed service area level was explicitly limited to "the purposes of applying reciprocal compensation obligations under section 251(b)(5)."⁵³

PRTC also complains about Centennial's wireline operations and an island-wide plan by WorldNet Communications. As PRTC is well aware, Centennial has an insignificant presence in the residential local exchange services market and WorldNet is not a facilities-based carrier; it is a reseller of PRTC's facilities and services. Moreover, WorldNet has no presence in the residential local exchange services market.⁵⁴ As to the local calling areas of these wireline carriers, the FCC has stated that:

[w]ith the exception of traffic to or from a CMRS network, state commissions have the authority to determine what geographic areas should be considered "local areas" *for the purpose of applying reciprocal compensation obligations under section 251(b)(5)*, consistent with the state commissions' historical practice of defining local service areas for wireline LECs. Traffic originating or terminating outside of the applicable local area would be subject to interstate and intrastate access charges. We expect the states to determine whether intrastate transport and termination of traffic between competing LECs, where a portion of their local service areas are not the same, should be governed by section 251(b)(5)'s reciprocal compensation obligations or whether intrastate access charges should apply to the portions of their local service areas that are different.⁵⁵

The use of an island-wide local calling zone for purposes of an interconnection agreement is not a reason to permit PRTC to implement a mandatory island-wide local calling

⁵³ *Id.*

⁵⁴ See Petition Exh. E tbls. 6–8, 10.

⁵⁵ 11 Rcd 15499, at ¶ 1035 (emphasis added).

area at the retail level.⁵⁶ An interconnection agreement contains the rates that carriers pay to each other for terminating each other's traffic. This benefits competition and consumers. PRTC seeks to implement an island-wide local calling zone at the retail level that would eliminate the intra-island long distance market and negatively impact consumers. An interconnection agreement is a vehicle to promote competition. PRTC's Single Zone Plan tariff revisions are not and do not. There are many examples where the local calling area for purposes of an interconnection agreement is dictated by the competitive carrier seeking the interconnection.⁵⁷

4. PRTC Should Not Be Permitted to Leverage Its Monopoly Power and Replace Its Current *Elective* Island-Wide Plan with the *Mandatory* Single Zone Plan

PRTC already offers an island-wide plan in the form of its Puerto Rico Ilimitado Calling Plan.⁵⁸ However, the Puerto Rico Ilimitado Calling Plan has not been very successful, which is why PRTC is attempting to make the Single Zone Plan a mandatory plan. But forcing customers to buy your product is not the proper response to lack of demand. Because local exchange service is currently as low as \$10/month,⁵⁹ imposition of the Single Zone Plan will increase some subscribers' rates by at least 69.5% or 264.5%, depending on whether they are assigned the \$16.95/month or \$26.45/month plan.

⁵⁶ As the California Public Utilities Commission has stated, "There is a difference between the retail service offering that [a CLEC] provides to its customers, e.g., LATA-wide local calling, and the wholesale obligations between carriers." *In re Global Naps, Inc.*, 2002 Cal. PUC LEXIS 319 at *18 (June 27, 2002).

⁵⁷ See *In re Investigation into Appropriate Methods to Compensate Carriers for Exchange of Traffic Subject to Section 251 of the Telecommunications Act of 1996*, 2002 Fla. PUC LEXIS 748 (Sept. 10, 2002); *Petition of Global Naps, Inc. Pursuant to Section 252(B) of the Telecommunications Act of 1996 For Arbitration to Establish an Inter-carrier Agreement with Verizon New York, Inc.*, 2002 N.Y. PUC LEXIS 228 (May 24, 2002).

⁵⁸ PRTC also offers several other island-wide calling plans. See Exh. B hereto.

⁵⁹ PRTC Comments at 20.

Most consumers in Puerto Rico do not currently choose to buy a wireline bundle—they subscribe to PRTC’s wireline local exchange service but choose not to purchase intra-island long distance service at all, choose to buy intra-island long distance service from a provider other than PRTC such as TLD, or buy intra-island service as a separate service from PRTC. Only a very small—a tiny minority of residential phone customers—buy the island-wide bundle from PRTC. There simply is nothing about competition or consumer demand in Puerto Rico that justifies the mandatory nature of the Single Zone Plan and concomitant foreclosure of competition in the intra-island market.

If PRTC really thinks that consumers overwhelmingly wish to purchase the bundle, then PRTC’s offer of the bundle as an option in the marketplace should prove wildly successful. PRTC’s scarce local wireline competition has no market power and, if any such competitor chooses to offer only a bundle, there are no anticompetitive effects. But the anticompetitive consequences of PRTC forcing the bundle on consumers, eliminating competition, extending its local monopoly island-wide, and stranding competitive investment, are enormous.

Many local exchange carriers throughout the country offer packages of local and long distance services (both intrastate and interstate). None have done what PRTC is attempting, *i.e.*, make the package mandatory so that whole markets are eliminated and competitors swept aside. Allowing this to occur in Puerto Rico would set a terrible precedent which could affect intrastate and interstate services across the country.

5. The Single Zone Plan Constitutes Anticompetitive Tying

PRTC's argument that there are no antitrust concerns because there are not two separate products must be rejected.⁶⁰ Local exchange service and intra-island long distance service are certainly separate products. PRTC sells these two services separately today, it faces some competitors who offer one product and not the other, it has near total market share in one and considerably less share in the other, these products are sold separately in all 50 states, and the sale of intra-state long distance remains a \$23 billion business. Moreover, PRTC already offers optional bundles and few customers buy them.⁶¹ To claim that a technological efficiency emerged in 2005 that warrants PRTC only selling these products as a bundle simply is not credible. PRTC never identifies the 2005 changes in technology and efficiency, but we do know that its decision came around the time access charges were reduced because gouging by PRTC was no longer allowed.

Simply put, PRTC is proposing to use its complete market power over local exchange service to force customers to buy another service that customers prefer to purchase elsewhere on different terms, a *per se* antitrust tie in offense under the Supreme Court's decision in *Jefferson Parish*.⁶² Even if a rule of reason analysis were applied (which would be contrary to Supreme Court authority), the tie-in should be prohibited. A lot of customers in Puerto Rico simply do not

⁶⁰ See PRTC Comments at 21-22. Even if bundled local and intra-island service was considered a distinct product, at best that would be a third product—not a basis to deny that local and intra-island service remain separate products.

⁶¹ *Nobody In Particular Presents, Inc. v. Clear Channel Commc'ns, Inc.*, 311 F. Supp. 2d 1048, 1093 (D. Colo. 2004) ("The test for determining whether two objects are separate products, as opposed to the same product, turns not on their function, but on the nature of any consumer demand for them.").

⁶² See *Jefferson Parish Hosp. Dist. No. 2 v. Hyde*, 466 U.S. 2, 12 (1984) (tying "force[s] the buyer into purchase of a tied product that the buyer either did not want at all, or might have preferred to purchase elsewhere on different terms.").

want the intra-island service at all; in TLD's experience, a very significant number of residential local exchange service subscribers typically do not make intra-island long distance calls. In addition, competitors of PRTC hold a significant market share of the residential intra-island long distance market. The residential number in the two categories combined shows that approximately 50% of the market does not currently want or regularly use PRTC's intra-island long distance service with PRTC local exchange service, let alone prefer a PRTC bundle.

It is obvious why a monopolist like PRTC would blithely suggest that competitors should just offer the complete bundle by entering the local exchange market over which it has near total dominance—that is exactly the kind of barrier to entry that it knows will raise rivals' costs of competing and immensely compound the difficulty of competing effectively, if not completely defeat it. Monopolists always prefer to require a competitor to have to enter multiple markets in order to compete, especially one like the residential local exchange service market, which has proven to be all but impenetrable. Preventing the loss of choice that comes from that scenario is exactly what tie-in law seeks to prevent. In this case, implementation of PRTC's tariff would do more than most illegal tie-ins accomplish—it would immediately force competitors with significant businesses from the marketplace, destroying their business, appropriating their revenues, and overriding customer choice.


II. CONCLUSION

As PRTC is the incumbent residential local exchange carrier with a virtual monopoly in the residential local exchange services market and dominant status in the business local exchange services market and the intra-island long distance services market, Puerto Rico Board action that will make the Single Zone Plan the law of Puerto Rico will result in the elimination of competition in the intrastate long distance market. TLD respectfully requests a ruling declaring that approval by the Puerto Rico Board of the Single Zone Plan violates Section 253(a).

Alternatively, if the Puerto Rico Board approves the Single Zone Plan (including permitting the Single Zone Plan to go into effect) prior to a ruling by the Commission on TLD's Petition, TLD requests that the Commission preempt the Single Zone Plan pursuant to Section 253(d).

Respectfully submitted,

TELEFÓNICA LARGA DISTANCIA DE
PUERTO RICO, INC.

By: 

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1875 Connecticut Avenue, NW
Washington, D.C. 2000-5728
(202) 986-8000

February 6, 2006

Exhibit A

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)
)
Telefónica Larga Distancia)
de Puerto Rico, Inc.)
)
Petition for Expedited Declaratory Ruling)
Under Section 253 of the)
Communications Act of 1934, as amended)

WC Docket No. 06-1

DECLARATION OF RODRIGO ANGULO GÓMEZ-MARAÑÓN

I, Rodrigo Angulo Gómez-Marañón, under penalty of perjury declare and say as follows:

1. I am Commercial Vice President for Telefónica Larga Distancia de Puerto Rico, Inc. ("TLD"). I am the same Rodrigo Angulo Gómez-Marañón who provided a declaration as Exhibit A to TLD's Petition for Expedited Declaratory Ruling in these proceedings.

2. I have read and am familiar with the Reply Comments to which this Declaration is appended and is to be filed with the Federal Communications Commission. The facts alleged therein are true and correct to the best of my knowledge and belief.



Rodrigo Angulo Gómez-Marañón

Dated: February 6, 2006

Affidavit Number: 19

Sworn and subscribed before me by Rodrigo Angulo Gómez-Marañón, of legal age, married, proprietor, and resident of Río Piedras, Puerto Rico, personally known to me.

In San Juan, Puerto Rico, this 6 day of February, 2006.

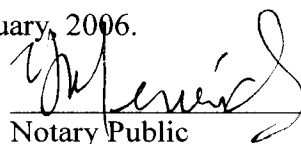

Notary Public

Exhibit B

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Telephone Number

☐ Business

☐ Residential

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Business/Last Name:

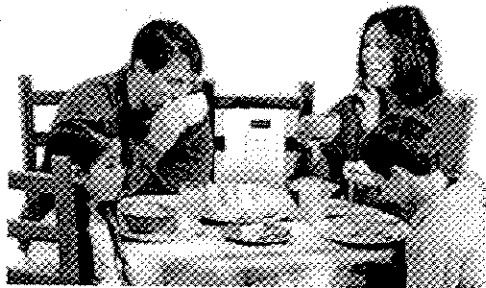
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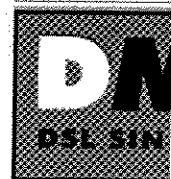
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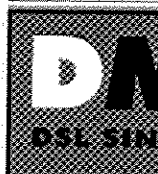
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DMAX Experience Combo	\$49.99	Press Here
DMAX Generation Combo	\$69.99	Press Here
DMAX Evolution Combo	\$84.99	Press Here
DMAX Extreme Combo	\$94.99	Press Here
MaxCombo Plus	\$29.99	Press Here
MaxCombo	\$24.99	Press Here
CentiCombo Plus	\$14.99	Press Here
CentiCombo	\$9.99	Press Here

DMAX One Combo	<ul style="list-style-type: none"> For residential use DMAX Experience (128/64) and the new Speed Touch modem for FREE, valued in \$99.99. Caller ID (Tel./Name), Call Waiting, Call Forwarding, Voice Mail, Anonymous Call Restriction. 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	Back
DMAX	<ul style="list-style-type: none"> For residential use 	Back

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Experience Combo	<ul style="list-style-type: none"> • DMAX Experience (256/128) and the new Home Gateway modem for only \$49.95 (on-time charge), valued in \$248.95. • Caller ID (Tel./Name), Call Waiting, Call Forwarding, Voice Mail, Anonymous Call Restriction. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	
DMAX Generation Combo	<ul style="list-style-type: none"> • For residential or business use • DMAX Generation (512/128) and the new Home Gateway modem for only \$49.95 (on-time charge), valued in \$248.95. • Caller ID (Tel./Name), Call Waiting, Call Forwarding, Voice Mail, Anonymous Call Restriction. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	Back
DMAX Evolution Combo	<ul style="list-style-type: none"> • For residential or business use • DMAX Evolution and the new Home Gateway modem for only \$49.95 (on-time charge), valued in \$248.95. • Caller ID (Tel./Name), Call Waiting, Call Forwarding, Voice Mail, Anonymous Call Restriction. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. 	Back

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DMAX Extreme Combo	<ul style="list-style-type: none"> • For residential or business use • DMAX Evolution and the new Home Gateway modem for only \$49.95 (on-time charge), valued in \$248.95. • Caller ID (Tel./Name), Call Waiting, Call Forwarding, Voice Mail, Anonyumous Call Restriction. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	Back
MaxCombo Plus	<ul style="list-style-type: none"> • Internet. • Caller ID (Tel./Name), Call Waiting, Call Forwarding, Voice Mail, Anonyumous Call Restriction. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	Back
MaxCombo	<ul style="list-style-type: none"> • Internet. • Call Transfer, Voice Mail. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	Back
CentiCombo Plus	<ul style="list-style-type: none"> • Caller ID, Call Waiting, Three Way Calling, Return Call, Call Transfer, Anonyumous Call Restriction. • 100 minutes a month of long distance 	Back

	<p>within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day².</p> <ul style="list-style-type: none"> • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	
CentiCombo	<ul style="list-style-type: none"> • Caller ID, Call Waiting, Three Way Calling, Return Call, Call Transfer, Anonymous Call Restriction. • 100 minutes a month of long distance within Puerto Rico and to the United States; additional minutes at 5¢ during the nights¹ and 9¢ during the day². • International block: It tariffs fixed of 30¢ the minute to 50 countries of Latin America, the Caribbean, Europe and Asia. <p>Subscribe on line</p> <p>To subscribe call: 811 or visit our DMAX's Booths</p>	Back

[1]Night covers from 8:00 p.m. through 7:59 a.m.

[2]Day covers from 8:00 a.m. through 7:59 p.m.



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CERTIFICATE OF SERVICE

I hereby certify that I have on this 6th day of February 2006 served a copy of the foregoing Reply Comments on the following persons by first-class mail, unless otherwise noted:

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*Also sent by electronic mail.


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